

## § 120.1070

without SBA's prior written permission. An SBA Lender, Intermediary, and NTAP may use the Report, Risk Rating, and Confidential Information for confidential use within its own immediate corporate organization. SBA Lenders, Intermediaries, and NTAPs must restrict access to their Report, Risk Rating and Confidential Information to those of its officers and employees who have a legitimate need to know such information for the purpose of assisting them in improving the SBA Lender's, Intermediary's, or NTAP's SBA program operations in conjunction with SBA's Lender Oversight Program and SBA's portfolio management (for purposes of this regulation, each referred to as a "permitted party"), and to those for whom SBA has approved access by prior written consent, and to those for whom access is required by applicable law or legal process. If such law or process requires SBA Lender, Intermediary, or NTAP to disclose the Report, Risk Rating, or Confidential Information to any person other than a permitted party, SBA Lender, Intermediary, or NTAP will promptly notify SBA and SBA's Information Provider in writing so that SBA and the Information Provider have, within their discretion, the opportunity to seek appropriate relief such as an injunction or protective order prior to disclosure. For purposes of this regulation, "Information Provider" means any contractor that provides SBA with the Risk Rating. Each SBA Lender, Intermediary, and NTAP must ensure that each permitted party is aware of these regulatory requirements and must ensure that each such permitted party abides by them. Any disclosure of the Report, Risk Rating, or Confidential Information other than as permitted by this regulation may result in appropriate action as authorized by law. An SBA Lender, Intermediary, and NTAP will indemnify and hold harmless SBA from and against any and all claims, demands, suits, actions, and liabilities to any degree based upon or resulting from any unauthorized use or disclosure of the Report, Risk Rating, or Confidential Information. Information Provider con-

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tact information is available from the Office of Capital Access.

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### § 120.1070 Lender oversight fees.

Lenders are required to pay to SBA fees to cover costs of examinations and reviews and, if assessed by SBA, other Lender oversight activities.

(a) *Fee components.* The fees may cover the following:

(1) *On-site examinations.* The costs of conducting on-site safety and soundness examinations of an SBA-Supervised Lender, including any expenses that are incurred in relation to the examination. For the purposes of this paragraph, the term "SBA-Supervised Lender" means a Small Business Lending Company or a Non-Federally Regulated Lender.

(2) *On-site reviews.* The costs of conducting an on-site review of a Lender, including any expenses that are incurred in relation to the review.

(3) *Off-site reviews/monitoring.* The costs of conducting off-site reviews/monitoring of a Lender, including any expenses that are incurred in relation to the review/monitoring activities. SBA will assess this charge based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's portfolio. SBA may waive the assessment of this fee for all Lenders owing less than a threshold amount below which SBA determines that it is not cost effective to collect the fee.

(4) *Other lender oversight activities.* The costs of additional expenses that SBA incurs in carrying out Lender oversight activities (for example, the salaries and travel expenses of SBA employees and equipment expenses that are directly related to carrying out Lender oversight activities). This charge will be based on each Lender's portion of the total dollar amount of SBA guarantees in SBA's portfolio.

(b) *Billing process.* For the on-site examinations or reviews conducted under (a)(1) and (a)(2) above, SBA will bill each Lender for the amount owed following completion of the examination or review. For the off-site reviews/monitoring conducted under (a)(3) above and the other Lender oversight expenses incurred under (a)(4) above, SBA will bill each Lender for the amount

owed on an annual basis. SBA will state in the bill the date by which payment is due SBA and the approved payment method(s). The payment due date will be no less than 30 calendar days from the bill date.

(c) *Delinquent payment and late-payment charges.* Payments that are not received by the due date specified in the bill shall be considered delinquent. SBA will charge interest, and other applicable charges and penalties, on delinquent payments, as authorized by 31 U.S.C. 3717. SBA may waive or abate the collection of interest, charges and/or penalties if circumstances warrant. In addition, a Lender's failure to pay any of the fee components described in this section, or to pay interest, charges and penalties that have been charged, may result in a decision to suspend or revoke a participant's eligibility or to limit a participant's delegated authority.

#### ENFORCEMENT ACTIONS

##### **§ 120.1400 Grounds for enforcement actions—SBA Lenders.**

(a) *Agreement.* By making SBA 7(a) guaranteed loans or 504 loans, SBA Lenders automatically agree to the terms, conditions, and remedies in Loan Program Requirements, as promulgated or issued from time to time and as if fully set forth in the SBA Form 750, Loan Guaranty Agreement or other applicable participation, guaranty, or supplemental agreement.

(b) *Scope.* SBA may undertake one or more of the enforcement actions listed in § 120.1500 or as otherwise authorized by law, if SBA determines that the grounds applicable to the enforcement action exist. Paragraphs (c) through (e) of this section list the grounds that trigger enforcement actions against each type of SBA Lender. In general, the grounds listed in paragraph (c) apply to all SBA Lenders. However, certain enforcement actions against SBA Supervised Lenders require the existence of certain grounds, as set forth in paragraphs (d) and (e). In addition, paragraph (f) of this section lists two additional grounds for taking enforcement action against CDCs that do not apply to other SBA Lenders.

(c) *Grounds in general.* Except as provided in paragraphs (d) and (e) of this section, the grounds that may trigger an enforcement action against any SBA Lender (regardless of its Risk Rating) include:

(1) Failure to maintain eligibility requirements for specific SBA programs and delegated authorities, including but not limited to: 7(a), PLP, SBAExpress, 504, ALP, PCLP, the alternative loss reserve pilot program and any pilot loan program;

(2) Failure to comply materially with any requirement imposed by Loan Program Requirements;

(3) Making a material false statement or failure to disclose a material fact to SBA. (A material fact is any fact which is necessary to make a statement not misleading in light of the circumstances under which the statement was made.);

(4) Not performing underwriting, closing, disbursing, servicing, liquidation, litigation or other actions in a commercially reasonable and prudent manner for 7(a) or 504 loans, respectively, as applicable. Evidence of such performance or actions may include, but is not limited to, the SBA Lender having a repeated Less Than Acceptable Risk Rating (generally in conjunction with other evidence) or an on-site review/examination assessment which is Less Than Acceptable;

(5) Failure within the time period specified to correct an underwriting, closing, disbursing, servicing, liquidation, litigation, or reporting deficiency, or failure in any material respect to take other corrective action, after receiving notice from SBA of a deficiency and the need to take corrective action;

(6) Engaging in a pattern of uncooperative behavior or taking an action that SBA determines is detrimental to an SBA program, that undermines management or administration of a program, or that is not consistent with standards of good conduct. Prior to issuing a notice of a proposed enforcement action or immediate suspension under § 120.1500 based upon this paragraph, SBA must send prior written notice to the SBA Lender explaining why the SBA Lender's actions were uncooperative, detrimental to the program,